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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,016	09/29/2000	Seth Bradley Noble	004098.P003	3225
7590	09/09/2005			
Robert B O'Rourke Blakely Sokoloff Taylor & Zafman LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026			EXAMINER COULTER, KENNETH R	
			ART UNIT	PAPER NUMBER
			2141	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/676,016

Applicant(s)

NOBLE, SETH BRADLEY

Examiner

Kenneth R. Coulter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 103 are rejected under 35 U.S.C. 102(e) as being disclosed by Campbell et al. (U.S. Pat. Pub. No. 2003/0140159) (Method and System for Transmitting and/or Retrieving Real-Time Video and Audio Information over Performance-Limited Transmission Systems).

2.1 Regarding claim 1, Campbell discloses a method comprising:

recurring adjustment of an ongoing data flow between a pair of nodes communicatively coupled by a network, said recurring adjustment performed by way of alterations made to characteristics of said flow, such alterations being scheduled and determined in response to ongoing observations of network performance statistics related to said flow's previous behavior (Fig. 8; Abstract; paragraphs 96, 97, 135, 136).

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2.2 Per claims 2 – 15, Campbell discloses the specifics involving the performance statistics being a window transit time (paragraphs 26, 135, 136), average delay (paragraphs 26, 60, 135), arrival rate of expected messages (paragraphs 24, 135), and state of a queue (Figs. 6, 7; paragraph 135).

However, Campbell does not explicitly disclose a flow timeout threshold.

It would have been inherent to include a flow timeout threshold in Campbell in order to handle fault scenarios in the transmission of data between client and server in Campbell.

3.3 Regarding claim 16, Campbell discloses a method comprising:

updating statistics that characterize an existing transaction over a network between a client and a server so that said statistics reflect an arrival event, said transaction comprising a series of messages sent to said client from said server that each contain their own portion of data that is desired by said client, wherein, said arrival event is the arrival of one of said messages at said client, said statistics being *maintained* by said client (Fig. 4; paragraphs 96, 97, 135, 136); and

inquiring at said client whether increasing the information flow of said transaction is appropriate in light of said arrival event (paragraphs 96, 97, 135, 136).

3.4 Per claims 17 - 37, Campbell discloses the specifics involving the performance statistics being a window transit time (paragraphs 26, 135, 136), average delay

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(paragraphs 26, 60, 135), arrival rate of expected messages (paragraphs 24, 135), and state of a queue (Figs. 6, 7; paragraph 135).

However, Campbell does not explicitly disclose a flow timeout threshold.

It would have been inherent to include a flow timeout threshold in Campbell in order to handle fault scenarios in the transmission of data between client and server in Campbell.

3.5 Regarding claims 38 – 103, the rejection of claims 1 – 37 under 35 USC 102(e) (paragraphs 3.1 – 3.4) applies fully.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1 - 103 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Hales et al. (U.S. Pat. No. 5,925,105)

Conferencing system that modifies the size of packets transmitted dynamically during transmission time based on the capabilities of the transport medium. (col. 7, line 51 – col. 8, line 10).

Goetz et al. (U.S. Pat. No. 5,928,330)

A streaming system in a client-server scenario that dynamically adapts “the streaming rate of the streaming in response to the importance information and in response to the inferred network conditions.” (Abstract).

Schneider (U.S. Pat. No. 6,687,753)

Client-server transmission system where transmission methods are based on performance evaluation results that include bandwidth evaluation. Network bandwidth varies during operation so bandwidth evaluation is updated (col. 4, lines 3 – 25).

Del Val et al. (U.S. Pat. No. 6,763,392) (filed Sept. 29, 2000)

A media streaming system that dynamically and selectively modifies the streaming media in response to network conditions (Abstract).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharra can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KENNETH R. COULTER

PRIMARY EXAMINER

krc

